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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,321	05/24/2001	Volkmar Heuer	Q64387	1370

7590 07/19/2006

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EXAMINER

PHAN, TRI H

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

57

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/863,321	Applicant(s) HEUER, VOLKMAR	
	Examiner Tri H. Phan	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 23 June 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's response to the final rejection, filed on June 23, 1006, has been considered, but it is not deemed to place the application in condition for allowance because the applicant's arguments on claims 1-3 are not persuasive. The applicant's arguments, see REMARKS, page 2, second paragraph, for the subject matter of Wakim (US 6,477,178) and the presently claimed were commonly owned at the time the invention as made, appear to overcome the rejection of claims 5-10 under 35 U.S.C. 103(a). The traversal is based on the ground:

In the REMARKS, pages 3-8, Applicant argues claim 1 recites the method for transmitting frame of the frame-structured synchronous multiplex signal, with multiplex units being formed of a concatenation of newly-formed multiplex units in a multiplex hierarchy, including its unchanged overhead section sent as payload in the concatenation of newly formed multiplex units. Examiner respectfully disagrees. Wakim et al. (US 6,477,178) does disclose the method for transmitting the synchronous payload envelope including the synchronous path and associated overhead portion and a payload portion over the Synchronous Optical Network, with a newly formed multiplexing units, e.g. "newly-formed", in a multiplex hierarchy (for example see figure 2; col. 7, lines 30-42), without terminating the synchronous path and associated overhead portions of each signal (for example see figure 2; col. 1, line 52 through col. 2, line 22; where the synchronous path and associated overhead portions are unchanged in the SPE payload) through the mapping at the matrix (for example see col. 7, line 43 through col. 8, line 10). Wakim also discloses about the concatenation of newly formed multiplex units in the payload where the VC-4-4c SPE or higher level concatenated signals in performing the SPE as disclosed in col. 8, lines 9-35; where, for example, four VC-4s concatenate into a newly-formed single VC-4-4c unit, AUG-4 and STM-4, e.g. concatenation of newly formed multiplex units in the payload. Applicant also argues that the "SPE is no frame". Examiner respectfully disagrees. Wakim does disclose the method for processing frames in the SPE, e.g. STM-N, as disclosed in col. 10, lines 46-47. Applicant further argues that Wakim does not teach about "packing a STS-N or an STM-N into an STM-N". However, packing specific structure such as STS-N or STM-N into an STM-N is not disclosed in the claimed language. Therefore, the examiner concludes that Wakim teaches the arguable features.


CHI PHAM
SUPERVISORY PATENT EXAMINER

7/17/06